

Amendment and Response

Applicant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING YIELD MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

REMARKS

The following remarks are made in response to the Office Action mailed September 26, 2005. Claims 1-30 have been cancelled. Claims 31-35 were rejected. With this Response, claims 31-35 have been amended. New claims 36-40 have been added. Claims 31-40 remain pending in the application and are presented for reconsideration and allowance.

In the Title

The Title has been amended to correspond with the above claim amendments.

Double Patenting Rejection

The Examiner provisionally rejected claims 31, 32, 33, 34, and 35 under the judicially created Doctrine of Obviousness-Type Double Patenting as being unpatentable over claims 2, 7, 12, 17, and 22 of co-pending Application No. 09/999,378.

The present application was filed on April 23, 2001 claiming priority to U.S. Provisional Patent Application 60/198,816, which was filed on April 21, 2000. The co-pending application Serial No. 09/999,378 was filed on October 31, 2001. Therefore, since the 09/999,378 co-pending application was filed after the filing date of the present application, this provisional double patenting rejection is improper. Therefore, Applicant respectfully requests that the provisional double patenting rejection to claims 31-35 based claims 2, 7, 12, 17, and 22 of co-pending Application No. 09/999,378 be removed and these claims be allowed.

Claim Rejections under 35 U.S.C. § 101

The Examiner rejected claims 31 and 34-35 under 35 U.S.C. §101 because the claimed invention is direct to non-statutory subject matter.

Applicant has amended independent claims 31 and 35 to include accepting, via a computer, transaction parameter values for composite resources. Therefore, independent claims 31 and 35 now properly claim an invention within the technological arts.

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Independent claim 34 claims a computer-readable medium containing program instructions for controlling a computer to perform a method. Therefore, independent claim 34 claims a computer-readable medium, which is within the technological arts.

Therefore, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 101 rejections to claims 31 and 34-35, and requests allowance of these claims.

Claim Rejections under 35 U.S.C. § 102

The Examiner rejected claims 31-35 under 35 U.S.C. § 102(e) as being anticipated by the Walker et al. U.S. Patent No. 6,298,331.

Amended independent claims 31-35 include limitations defining the at least one service date and service time is a date and/or time measure indicating a present or future first date and/or time when the service is available and that the communication occurs prior to any first assignment of other concurrently-consumed and/or utilized composite resource to the at least one potential user. These limitations further define the limitations of amended independent claims 31-35 related to accepting transaction parameter values for composite resources, wherein each composite resource has associated therewith at least one of a service state and a service time. Amended independent claims 31-35 also include limitations related to communicating at least a portion of the transaction parameter values for at least one composite resource to at least one potential user of the at least one composite resource, the communication attempting to modify at least one of the demand for the at least one composite resource and the capacity of the at least one composite resource, wherein when capacity exceeds demand for the at least one composite resource, the communication attempts to increase the demand for and/or decrease the capacity of the at least one composite resource. Amended independent claim 34 also includes limitations of indicating, when the capacity of a composite resource exceeds the demand for the composite resource, that the demand for the composite resource should be increased and/or the capacity of the composite resource should be decreased.

The Walker et al. patent does not teach the above recited limitations of amended independent claims 31-35.

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The Walker et al. patent discloses a method and apparatus for selling an aging food product. An automated kitchen apparatus determines a time until expiration of a food product. The kitchen apparatus determines the time until expiration by receiving a start signal indicating that a food product is available to sell. The start signal may be generated by a timer on a warming bin that is initiated when a food product is placed in the warming bin. The time until expiration is determined by measuring the elapsed time since the start signal was received. The automated kitchen apparatus sets the minimum price of that food product based on the time until expiration. Customers at a point-of-sale (POS) terminal may then purchase the aged food product for the minimum price or for an amount greater than the minimum price. In one embodiment, an offer describing the food product and its minimum price is displayed on the POS terminal. In another embodiment, the customer is offered the food products for the customer's change due, if that change due is not less than the minimum price.

The Walker et al. patent teaches reduction in the supply of a subset of the total supply of a product (e.g., the subset is the aging food product). The Walker et al. patent specifically teaches tracking the physical location and aging status (through some timing mechanism) of the aging food product. The Walker et al. patent communicates an offer represented as a reduced price to a potential user of the aging food product. The Walker et al. patent completes the sale of the aging food product. In the Walker et al. patent, the potential user of aging food product must be proximate to a POS terminal and both place their order and intend to use the aging food product within a period of time similar in length to the unit of measure employed for determining aging.

The following are specific limitations of amended independent claims 31-35 which are not taught or suggested by the Walker et al. patent. The Walker et al. patent does not teach or suggest accepting transaction parameter values for composite resources wherein each composite resource has associated therewith at least one of a service date and a service time, wherein the at least one service date and service time is a present or future date and/or time when the service is available.

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The Walker et al. patent does refer to several component-related time measurements (e.g., Start (an initial time value constant, "now" or in the past), Expires (an expiration time value constant, now or in the future), and Age (a dynamically decrementing countdown time value)). All of these Walker disclosed component-related time values are in no way related to a service time, but rather to a class of component-related times. In contrast, the at least one of a service date and a service time limitation of amended independent claims 31-35 is limited to when the perspective user may obtain the composite resource and measures the availability or unavailability of a particular composite resource at a present or future date and/or point in time.

Any time disclosed in the Walker patent at all related to service is always "now minus 10-120 seconds." The customer has already placed their order (the time immediately before which was "now") and is being asked by the system to supplement their existing order for the purpose of increasing demand for the expiring raw material component by selling a finished good component, which includes the raw material component. Thus, the Walker patent clearly does not teach accepting transaction parameter values for composite resources comprising a present or future service date and/or service time as recited in amended independent claims 31-35, because any time at all associated with a service is already a past event in the Walker patent.

Amended independent claims 31-35 also include the limitations that the communication occurs prior to any first assignment of other concurrently-consumed and/or utilized composite resources to the at least one potential user which is not taught or suggested by the Walker et al. patent. Rather, in the Walker et al. patent, any communication is made after the customer has already placed their order (i.e., the time immediately before which was "now") and is being asked by the system to supplement their existing order for the purpose of increasing demand for the expiring raw material component by selling a finished good component which includes the raw material component. For example, embodiments of the invention defined by independent claims 31-35 would include the customer placing an order immediately before, several minutes, hours, days, or even weeks before which is in contrast to the Walker et al. system where the customer has already placed their order and is being asked by the system to supplement their existing order.

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In addition, the Walker et al. patent does not teach or suggest the limitations of amended independent claims 31-35 related to communicating at least a portion of the transaction parameter values for at least one composite resource to at least one potential user of the composite resource with the communication attempting to modify at least one of the demand for the composite resource and the capacity of the composite resource, **when the capacity exceeds demand for the composite resource**, the communication attempts to increase the demand for and/or decrease the capacity of the at least one composite resource. In addition, the Walker et al. patent does not teach or suggest the limitations of amended independent claim 34 related to indicating, **when capacity of the composite resource exceeds demand for the composite resource**, that the demand for the composite resource should be increased and/or the capacity of the composite resource should be decreased.

By contrast, the Walker et al. patent does not teach basing any action on capacity of a composite resource or when capacity exceeds demand for a composite resource as clearly defined in the amended independent claims. Instead, the Walker et al. patent teaches measuring the total supply of products at a first time and predicting reduction in the supply of a subset of the total supply of a product (e.g., the subset is the aging food product). The predicted supply quantity in the Walker patent is based on current available food (i.e., supply), the food that will expire within a period (i.e., reduction in the supply of a subset of the total supply), and orders that will occur within an anticipated period (i.e., demand for the supply). Thus, the Walker et al. patent does not in any way teach communicating or indicating **based on capacity of a composite resource or when capacity exceeds demand for a composite resource** wherein as defined in amended independent claims 31-35, capacity of the composite resource is a measure of the on-hand supply and/or availability, if applicable, of the composite resource at a first date and/or first time **plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time**.

In view of the above, each amended independent claim 31-35 includes limitations, which are not taught or suggested by the Walker et al. patent.

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Therefore, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 102(e) rejection to claims 31-35, and requests allowance of these claims.

New claims

Applicant has added new claims 36-40. Dependent claim 36 further defines patentably distinct independent claim 31; dependent claim 37 further defines patentably distinct independent claim 32; dependent claim 38 further defines patentably distinct independent claim 33; dependent claim 39 further defines patentably distinct independent claim 34; and dependent claim 40 further defines patentably distinct independent claim 35. Therefore, these dependent claims are also believed to be allowable. Accordingly, Applicant respectfully requests allowance of new claims 36-40.

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CONCLUSION

In view of the above, Applicant respectfully submits that pending claims 31-40 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 31-40 are respectfully requested.

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Any inquiry regarding this Amendment and Response should be directed to Patrick G. Billig at Telephone No. (612) 573-2003, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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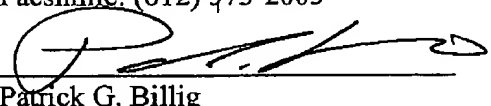
Respectfully submitted,

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CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this paper or papers, as described herein, are being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300 on this _____ day of December, 2005.

By 
Name: Patrick G. Billig

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